IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-7-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.Nos.16704 of 2006

K. Vadivelu Petitioner

Vs.

1. The Government of Tamil Nadu,
rep.by the Secretary,
Revenue Department,
Fort St. George,
Madras - 9.

2. The Commissioner of Survey and Settlement,
Chepauk, Madras - 5.

3. The Additional Director of Survey and Land Records,
Madras - 5.

4. The Assistant Director of Survey and Land Records,
Gandhiji Road,
Tanjore.

5. The Accountant General of T.N.,
Teynampet,
Madras - 600 018. ... Respondents

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PRAYER: This writ petition came to be numbered by way of transfer of O.A.No.1729 of 1995 from the file of the Tamil Nadu Administrative Tribunal with a prayer to quash the impugned order passed by the 4th respondent in Proceeding Na.Ka.No.17597/94 (A1), dated 1.3.1995 and the order of the 5th respondent in Proc.No.AG(A&E) Pen.5/IV/V-43-691/94-95 dated 19.12.1994 and declare that the petitioner has retired from service on 31.12.1994 for all purposes and to direct the respondents to pay the gratuity amount and the pensionary benefits

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For Petitioner : Mr.S.M.Subramaniam
For Respondents : Mr.V.Manoharan,
Government Advocate

O R D E R

Petitioner seeks to quash the orders dated 1.3.1995 and 19.12.1994 of the 4th respondent and 5th respondent respectively, wherein recovery was ordered from the gratuity of the petitioner.

2. The petitioner reached the age of superannuation on 30.4.1993, however, on the basis of the claim for alteration of date of birth, he was re-employed from 1.5.1993 to 31.12.1993 as per the order of the Tribunal made in O.A.No.2004 of 1993 dated 15.4.1993, wherein the Tribunal directed the respondents to consider the request of the petitioner for alteration of Date of Birth before 30.4.1993 and if no order is passed before the said date, petitioner was directed to be continued till the order is passed. The learned counsel for the petitioner submitted that since the department has not passed any order as ordered by the Tribunal, he was given re-employment as Senior Draftsman from 1.5.1993 and worked till 31.12.1993 and for the period in which the petitioner served, he was paid salary and the same cannot be ordered to be recovered.

3. In paragraph 12 of the counter affidavit filed by the respondents it is stated that for the period from 1.5.1993 to 31.12.1993, the petitioner was re-employed and the said period of re-employment will not be taken up for calculation of pensionary benefits. Petitioner received a sum of Rs.29,478/- as pay and allowances for the above period of re-employment and also received a sum of Rs.15,048/- as pension for the above period from Sub Treasury Office, Tiruvarur. The Assistant Director of Survey and Land Records, Thanjavur in his letter dated 15.9.1995 addressed to the Accountant General, Madras, ordered to recover the excess amount of Rs.15,048/- paid towards pension from the Death-cum-Retirement Gratuity and the said direction was given as per section 70 of the Tamil Nadu Pension Rules, 1978. It is also stated in the counter affidavit that in view of the same the request of the petitioner is complied with.

4. In the light of the stand taken in the counter affidavit and having regard to the fact that the petitioner received pension for the period of his re-employment and he having received full salary for the period of re-employment, recovery of pension amount of Rs.15,048/- ordered

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under section 70 of the Tamil Nadu Pension Rules, 1978, is proper and the salary paid to the petitioner for the period o re-employment i.e., from 1.5.1993 to 31.12.1993 shall not be recovered.

The writ petition is dismissed with the above observation. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

vr

To

1. The Secretary, Revenue Department,
   Fort St. George, Madras - 9.

2. The Commissioner of Survey and Settlement,
   Chepauk, Madras - 5.

3. The Additional Director of Survey and Land Records,
   Madras - 5.

4. The Assistant Director of Survey and Land Records,
   Gandhiji Road, Tanjore.

5. The Accountant General of T.N.,
   Teynampet, Madras - 600 018.

1 cc to Mr.S.M..Subramanaiam Advocate SR.NO.41948
1 cc to Govt.pleader SR.NO. 42081

klt (co)
RD 27.7.07

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